UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JENNIFER BRADLEY,

Plaintiff,

v.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, *et al.*,

Defendants.

Civil Action No. 1:16-CV-00346 (RBW)

Judge: Reggie B. Walton

REQUEST FOR ORAL HEARING

DEFENDANT NATIONAL COLLEGIATE ATHLETIC ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT REGARDING NEGLIGENCE

The National Collegiate Athletic Association ("NCAA"), by and through its counsel, Orrick, Herrington & Sutcliffe LLP, and pursuant to the Federal Rules of Civil Procedure, the Rules of this Court, and the Honorable Judge Walton's Scheduling Order, hereby files this Motion for Summary Judgment Regarding Negligence, seeking to dismiss Plaintiff's negligence claim, *with prejudice* - the only claim remaining in this action against the NCAA.

In support thereof, the NCAA relies upon the accompanying memorandum of points and authorities in support of this motion, its statement of undisputed material facts, the declaration of William F. Stute in support of this motion and exhibits to that declaration, any other papers and argument that counsel may present to the Court, and the entire record of this case.

Pursuant to LCvR 7(f) on Oral Hearings, the NCAA respectfully requests an oral hearing on this motion at a date and time that the Court designates.

Dated: January 16, 2019

Respectfully submitted,

/s/ William F. Stute

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CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2019, I filed Defendant National Collegiate Athletic Association's Motion for Summary Judgment Regarding Negligence and accompanying documents using the CM/ECF system, which caused a copy to be served by email on all counsel of record, including:

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT NATIONAL COLLEGIATE ATHLETIC ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT REGARDING NEGLIGENCE

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Dated: January 16, 2019

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INTRODUCTION

The National Collegiate Athletic Association ("the NCAA"), by and through its counsel, Orrick, Herrington & Sutcliffe LLP, hereby submits the following Memorandum of Points and Authorities in Support of its Motion for Summary Judgment Regarding Negligence, seeking to dismiss Plaintiff's negligence claim, *with prejudice*, as a matter of law.

Almost every single day across the United States, student-athletes engage in athletic activities on campus under the guidance, direction, and instruction of college or university coaches, and under the care of the institution's trainers and doctors. The NCAA is barely on the radar screen of a student-athlete's life and not at all involved in daily athletic activities. Accordingly, the NCAA is not, as a matter of law, assigned with the responsibility or legal duty for monitoring the more than 460,000 student-athletes who participate at over 1,100 NCAA member institutions across the country regarding concussion prevention, warning, and treatment. And this makes perfect sense, as such an obligation would be both unrealistic and irresponsible. Instead, it is the member institutions that are most appropriately positioned to protect against, identify, respond to, and care for concussion injuries suffered by their student-athletes and their recognition of this idea is clearly demonstrated throughout various membership-created NCAA governance materials.

Whether a legal duty exists is determined, in large part, by the nature of the relationship between the parties. The NCAA does not have the legal duty to Plaintiff Jennifer Bradley ("Plaintiff" or "Ms. Bradley") that she relies upon. And, the undisputed facts in this case demonstrate that Plaintiff did not have ***any*** personal, special, or unique relationship with the NCAA giving rise to a legal duty in this particular case. Indeed, the undisputed facts are that Plaintiff never spoke to or contacted anyone at the NCAA following her alleged injury.

The NCAA Division I Manual further demonstrates that, as a matter of uncontroverted fact, the NCAA and its members have agreed that the NCAA's member institutions, *not the NCAA*,

explicitly assume the legal duty and responsibility to protect student-athletes against, warn student-athletes about, and care for student-athletes in the aftermath of, concussion injuries. Accordingly, American University ("AU") complied with this NCAA mandate by implementing its own "Concussion Management Plan," which Plaintiff herself signed.

Indeed, the facts developed in discovery demonstrate that the Concussion Management Plan adopted by AU worked exactly as intended, resulting in the medical treatment of Plaintiff shortly after she complained of symptoms from her alleged injury. If there is any tragedy in this case, it may be that the diagnosis Ms. Bradley received as part of that treatment allowed her to return to practice and play too soon, which, in turn, may have caused certain post-concussive symptoms and impact. None of this, however, gives rise to any legal liability for the NCAA.

For the reasons described in detail below, summary judgment should be entered in the NCAA's favor, and Plaintiff's negligence claim should be dismissed now, *with prejudice*.

FACTUAL BACKGROUND

I. NCAA Governance Structure

The NCAA is an unincorporated, voluntary association comprised of more than 1,100 member institutions. *See* Statement of Undisputed Material Facts ("SUMF") ¶ 1. It employs approximately 500 individuals, nearly all of whom work at its headquarters in Indianapolis, Indiana. *See* SUMF ¶ 2. Each year, more than 460,000 students across the country participate in 24 different sports, involving tens of thousands of intercollegiate athletic competitions and millions of practice events. *See* SUMF ¶ 3. The NCAA is member-led, and like all associations, its members determine the rules of the Association and the scope of the Association's duties and authority. *See* SUMF ¶ 4. Similar to other association structures, the NCAA does not control its members, or wield authority and responsibility over its members' activities, except with respect to those areas where the members have specifically delegated those roles to the NCAA. *See* SUMF

¶ 5.

The NCAA's governing documents, including the 2011-2012 NCAA Division I Manual (the "NCAA Division I Manual" or the "NCAA Manual"), demonstrate that the oversight and control of a student-athlete's well-being is not an area that has been delegated to the NCAA. *See* SUMF ¶ 6. Rather, they provide that member institutions, not the NCAA, retain nearly all of the control and oversight of intercollegiate sports-related activities, and make it clear that each member institution, and not the NCAA, is responsible for, and in control of, its intercollegiate athletics program including the health and safety of its participating student-athletes. *See* SUMF ¶ 7. Allocation to, and assumption by, the schools (*i.e.*, the institutions) of the legal responsibility for concussion prevention, warning, and treatment, is the only sensible result under the long-standing NCAA association structure, as the member institutions (inclusive of coaches, trainers and team physicians) are in the best possible position to protect against, identify, respond to, and care for concussion injuries suffered by their student-athletes. The student-athletes engage in their athletic activities on the institution's campus, under the guidance, direction, and instruction of the institution's coaches, and under the care of the institution's trainers and doctors.

Accordingly, the regular contact and communication with student-athletes concerning their athletic activities is almost entirely between the student-athletes and representatives of their respective colleges and universities. This line of communication and allocation of responsibility is as it must be for a collegiate athletic program to operate successfully. A day in the life of a student-athlete is all about the pervasive, inextricable links between the student-athlete and the personnel and other individuals on campus.

II. Concussion Management Plan

On August 12, 2010, the NCAA Division I Board of Directors, comprised entirely of conference and university representatives, adopted legislative updates that were included in the NCAA Division I Manual to require that all active member institutions "have a concussion management plan for its student-athletes." SUMF ¶ 8. The plan was required to include, but not be limited to, the following:

> (a) An annual process that ensures student-athletes are educated about the signs and symptoms of concussions. Student-athletes must acknowledge that they have received information about the signs and symptoms of concussions and that they have a responsibility to report concussion-related injuries and illnesses to a medical staff member;
>
> (b) A process that ensures a student-athlete who exhibits signs, symptoms or behaviors consistent with a concussion shall be removed from athletics activities (e.g., competition, practice, conditioning sessions) and evaluated by a medical staff member (e.g., sports medicine staff, team physician) with experience in the evaluation and management of concussions;
>
> (c) A policy that precludes a student-athlete diagnosed with a concussion from returning to athletics activity (e.g., competition, practice, conditioning sessions) for at least the remainder of that calendar day; and
>
> (d) A policy that requires medical clearance for a student-athlete diagnosed with a concussion to return to athletics activity (e.g., competition, practice, conditioning sessions) as determined by a physician (e.g., team physician) or the physician's designee. SUMF ¶ 9.

III. Plaintiff's Alleged Injury and Diagnosis

Plaintiff admits that, she "signed concussion papers" during an AU pre-season compliance meeting and that, she was informed that "if you're experiencing certain [concussion] symptoms to tell your trainer." SUMF ¶ 10. Plaintiff admits that she signed an AU Concussion Statement, which reads:

> "I understand that participation in intercollegiate athletics includes the risk of injury, including but not limited to serious permanent injury and death. I further understand that there is a possibility that participation in my sport may result in a

> head injury or concussion. I have been provided with education on head injuries and understand the importance of immediately reporting symptoms of a head injury/concussion to the Sports Medicine Staff." SUMF ¶ 11.

On September 23, 2011, Plaintiff allegedly suffered a concussion resulting from a collision during her play in a field hockey game against the University of Richmond, as a member of AU's Division I field hockey team.[1] *See* SUMF ¶ 12. Plaintiff recalls "feeling out of it" immediately after the collision but does not recall how she felt at halftime or in the second half of the game when she continued to play. SUMF ¶ 13. Plaintiff did not report her symptoms to any AU athletic trainers or staff until on or around October 1 or 2, 2011[2]—about a week after her alleged head injury. *See* SUMF ¶ 14. After the September 23, 2011 game against the University of Richmond, Ms. Bradley did not have any conversations with any of her AU teammates, the coaching staff, or trainers regarding how she was feeling. *See* SUMF ¶ 15.

On September 25, 2011, Plaintiff played another game against Boston College. *See* SUMF ¶ 16. Plaintiff did not have any conversations with the AU trainers or coaching staff before the Boston College game. *See* SUMF ¶ 17. On October 1, 2011, Ms. Bradley and her team played Lehigh University. *See* SUMF ¶ 18. According to Plaintiff, it was after the October 1st Lehigh University game that she finally had a discussion with Sarah Thorn and Jenna Earls from AU's training staff. *See* SUMF ¶ 19. By October 1, 2011, Plaintiff had been purportedly experiencing symptoms of her alleged concussion for about a week. *See* SUMF ¶ 20. Plaintiff also discussed her symptoms with Steve Jennings, the AU field hockey head coach. *See* SUMF ¶ 21. Prior to October 1 or October 2, Plaintiff attended all of her field hockey practices since the Richmond

[1] Nothing contained herein should be deemed an admission that the Plaintiff did, in fact, sustain a concussion and/or that she developed post-concussion syndrome. Although these facts are in dispute, it shall be assumed true for purposes of this Motion, only.

[2] Plaintiff recalls informing AU on October 1, 2011, but Ms. Earls, Plaintiff's field hockey trainer, documented that Plaintiff came to her after an October 2, 2011 game against Temple University. *See* SUMF ¶ 14. However, whether Plaintiff reported her alleged injury on the 1st or 2nd, is immaterial to this Motion.

game. *See* SUMF ¶ 22. And, according to Plaintiff, she "played and started" the October 2, 2011 AU game against Temple University. *See* SUMF ¶ 23.

On October 3, 2011, Plaintiff sent an email to Ms. Earls, her field hockey trainer, concerning the symptoms she was experiencing. *See* SUMF ¶ 24. Ms. Earls scheduled an appointment for Plaintiff to see Dr. Aaron Williams on October 5, 2011.[3] *See* SUMF ¶ 25. Dr. Williams informed Plaintiff that she did ***not*** have a concussion. *See* SUMF ¶ 26. According to Plaintiff, upon examination, Dr. Williams did ***not*** say she could no longer play field hockey, but Dr. Williams may have asked her to sit out for the next two practices. *See* SUMF ¶ 27.

On October 8, 2011, Plaintiff participated in the AU game against College of the Holy Cross, playing 15 minutes of each half. *See* SUMF ¶ 28. Plaintiff sat out for her next two games against Colgate University and the University of Maryland, on October 15 and 16, 2011, respectively. *See* SUMF ¶ 29. On October 16, 2011, Dr. Williams suggested that Plaintiff receive a second opinion. *See* SUMF ¶ 30. On October 20, 2011, Plaintiff visited Dr. Michael Morris, an ENT specialist, who informed Plaintiff that she may have a brain virus.[4] *See* SUMF ¶ 31. Neither Dr. Williams nor Dr. Morris were employed by or affiliated with the NCAA.

Over the following months, Plaintiff continued to participate in field hockey practices and games, sitting out intermittently. *See* SUMF ¶ 33. And, from November 2011 through February 2012, Plaintiff met with several medical professionals until she was diagnosed with a concussion sometime during spring of 2012. *See* SUMF ¶ 34.

The medical professionals Plaintiff visited during this time included, Plaintiff's family physician, Dr. Kumar, whom she visited during the 2011 Thanksgiving break and again on January

[3] Dr. Williams was an employee of the United States of America and was not employed by the NCAA.

[4] Dr. Morris was not employed by the NCAA.

4, 2012; a neurologist, Dr. Puneet Singh, whom she visited for the first time on January 9, 2012; and a psychotherapist, Barbara Blitzer, whom Plaintiff visited from February 24, 2012, to March 27, 2012. *See* SUMF ¶ 38. None of these medical professionals were employed by or affiliated with the NCAA.

Plaintiff was diagnosed with a concussion in the Spring of 2012. *See* SUMF ¶ 40. Although Plaintiff does not recall exactly when she was diagnosed with a concussion, she is certain that she was diagnosed by neurologist, Dr. Puneet Singh. *See* SUMF ¶ 41. At no point did Plaintiff or her physicians communicate with the NCAA about Plaintiff's symptoms, injuries, or otherwise; and Plaintiff made no attempt to visit the NCAA's website in order to contact the NCAA or find the NCAA's contact information. *See* SUMF ¶ 42.

Plaintiff's negligence claim against the NCAA arises from her alleged reliance "on Defendant NCAA's superior knowledge and expertise," and the NCAA's alleged failure to provide appropriate guidance to its member institutions, such as Defendant AU, on concussion management to protect student-athletes. SUMF ¶ 43.

On June 6, 2018, Plaintiff's expert, Dr. Robert Cantu, testified that the NCAA's 2010 Handbook was "very appropriate," because it required that "anybody suspected of a concussion or diagnosed with a concussion needed to be immediately removed from a contest [*i.e.*, practices or games]." SUMF ¶ 44. According to Plaintiff's expert, "the most criticism for this case" belonged *not* to the NCAA, but to Dr. Williams, who treated Ms. Bradley after her alleged injury, and found that she did not have a concussion. *See* SUMF ¶ 45.

During Plaintiff's November 21, 2017 deposition, Ms. Bradley admitted that she never called anyone at the NCAA and did not talk to anyone known to be affiliated with the NCAA about her alleged injury or any of her symptoms. *See* SUMF ¶ 46. According to Plaintiff, she trusted

her trainers to take care of her. *See* SUMF ¶ 47. Despite Plaintiff's allegations, she testified that she did not assume the NCAA owed her a legal duty of care when things went wrong, but that this duty, instead, was that of her "trainer, [ ] coaches, and if it got any worse, the doctors." SUMF ¶ 48. Ms. Bradley acknowledged that, "[f]ield hockey is a . . . physical sport." SUMF ¶ 49. She played field hockey voluntarily for AU, and with full knowledge of the risks associated with playing the sport. *See* SUMF ¶ 50.

On July 1, 2009, Plaintiff signed an "Acknowledgement of Risk" agreement with AU, where she acknowledged that she is "aware of the risks of injury inherent in athletic activities," and the risks in playing field hockey, in particular, and "that such risks may include death, paralysis and other serious permanent bodily injury." SUMF ¶ 51. Plaintiff acknowledged that "participation in intercollegiate athletics includes the risk of injury, including, but not limited to serious permanent injury and death" and that "such injuries may occur in the absence of negligence." SUMF ¶ 52.

Plaintiff concedes that she does not know what the NCAA could have done differently. *See* SUMF ¶ 53. Plaintiff admits that her head coach would have followed the doctor's orders on her readiness to play. *See* SUMF ¶ 54. According to Plaintiff, if her doctors informed her that she was not cleared to play, she would not have played. *See* SUMF ¶ 55.

STANDARD OF REVIEW

Under Federal Rule of Civil Procedure 56, the NCAA is entitled to summary judgement, if it can show that there is "no genuine dispute as to any material fact," and that it is entitled to "judgement as a matter of law." FED. R. CIV. P. 56. The moving party can satisfy its burden in two ways: (1) it can either produce evidence that negates an essential element of the non-moving party's claim, or (2) show that the non-moving party cannot provide sufficient evidence to support an essential element of its claim. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 331 (1986) (finding

that summary judgment is "an integral part of the Federal Rules as a whole, which are designed to secure the just, speedy and inexpensive determination of every action"). If the non-moving party is unable to offer evidence "sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial," summary judgment must be granted in favor of the moving party. *Jefferson v. Collins*, 210 F. Supp. 3d 75, 83 (D.D.C. 2016) (citing *Celotex Corp.*, 477 U.S. at 323 (1986)).

LEGAL ARGUMENT

I. Plaintiff's Negligence Claim Against the NCAA Fails as a Matter of Law

To prove her negligence claim, Ms. Bradley must establish that the NCAA: (1) "owed a [legal] duty of care" to her; (2) "breached that duty"; and (3) "proximately caused damage" to her as a result. *Parker v. John Moriarty & Assoc. of Virginia, LLC*, 332 F. Supp. 3d 220, 234-235 (D.D.C. 2018) (quoting *Haynesworth v. D.H. Stevens Co.*, 645 A.2d 1095, 1098 (D.C. 1994)).

Plaintiff's negligence claim must fail as a matter of law, because (1) she *cannot* establish that the NCAA owed her "a [legal] duty of care"; and (2) the NCAA's actions or inactions have no bearing on Plaintiff's alleged injuries, and therefore could not have proximately caused her alleged harm. And, lastly, not only does Plaintiff's claim against the NCAA fail as a matter of law, public policy considerations provide support for shielding the NCAA, and governing organizations like it, from unnecessary litigation. *See, e.g.*, *Bradley v. Nat'l Collegiate Athletic Ass'n*, 249 F. Supp. 3d 149, 177 (D.D.C. 2017).

a. The NCAA Owes Plaintiff No Legal Duty of Care

"A defendant is liable to a plaintiff for negligence only when the defendant owes the plaintiff some duty of care." *Id.* at 175 (quoting *Presley v. Commercial Moving & Rigging, Inc.*, 25 A.3d 873, 888 (D.C. 2011)). "Whether there is a duty of care is a question of law." *Id.* (internal citations omitted). "In general, courts rely on the concept of 'foreseeability' to determine whether

the defendant owed a duty to the [plaintiff] in a negligence action and examine whether the risk to the [plaintiff] was 'reasonably foreseeable' to the defendant." *Id.* (quoting *Hedgepeth v. Whitman Walker Clinic*, 22 A.3d 789, 793 (D.C. 2011)). And, "[t]he relationship between the plaintiff and the defendant is closely related to a court's determination of the foreseeability of the plaintiff's injury and, ultimately, the scope of the defendant's duty." 22 A.3d at 794.[5] Ultimately, however, "whether a duty exists … is determined, in large part, by the nature of the relationship between the parties." *Id.*

In this case, Plaintiff has not presented any facts showing that the NCAA had a special relationship with her, or any relationship with her for that matter. And frankly, to suggest that the NCAA maintains a personal relationship with each of the more than 460,000 student-athletes who participate in intercollegiate athletics would be both illogical and unsupported under the law. *See, e.g.*, *Flood v. Nat'l Collegiate Athletic Ass'n,* No. 1:15-CV-890, 2015 WL 5785801, at *11 (M.D. Pa. Aug. 26, 2015) ("[W]hile the NCAA oversees some aspects of intercollegiate athletics it is not a fiduciary for the thousands of student-athletes who participate in those sports, and may not be held to the legal standards of a fiduciary relationship.").

From October 2011 to the spring of 2012, Plaintiff saw a variety of medical professionals, including, but not limited to: (1) Dr. Williams, who worked for the United States; (2) Dr. Michael Morris, an ENT specialist; (3) Dr. Kumar, Plaintiff's family physician; (4) Dr. Puneet Singh, the neurologist to whom Dr. Kumar referred Plaintiff ; and (5) Dr. Barbara Blitzer, a psychotherapist. *See supra* pp. 6-7. None of these medical professionals was employed by or affiliated with the NCAA, nor did any of them work under the direction of the NCAA when reaching their respective medical conclusions after assessing Plaintiff's alleged injuries. It is undisputed that the NCAA

[5] "[T]he existence of a duty is also shaped by considerations of fairness and results ultimately from policy decisions made by the courts and the legislatures." *Bradley*, 249 F. Supp. 3d at 175 (quoting *Jefferson*, 905 F. Supp. 2d at 291).

does not play a role in providing medical advice or direction to student-athletes and did not provide any such services to Plaintiff in this case.

In *Lanni v. Nat'l Collegiate Athletic Ass'n*, the Indiana Court of Appeals affirmed a trial court's summary judgement decision dismissing the *Lanni* plaintiff's negligence claim against the NCAA. 42 N.E.3d 542, 545 (Ind. Ct. App. 2015). At issue in *Lanni* was, among other things, whether the NCAA owed a student-athlete, who was injured as a spectator, a legal duty of care. *See id*. at 543-44, 546. The *Lanni* court found that "the specific duties undertaken by the NCAA with respect to the safety of its student-athletes was simply to provide information and guidance to the NCAA's member institutions and student-athletes." *Id*. at 553.

The *Lanni* court rightly found that although the NCAA "actively engage[d] its member institutions and student-athletes in how to avoid unsafe practices," those acts did "not rise to the level of assuring protection of the student-athletes from injuries that may occur at sporting events." *Id*. The Indiana Court of Appeals ultimately concluded that because the *Lanni* plaintiff "cannot demonstrate the element of duty required for her negligence claim against the NCAA," the trial court's entry of summary judgement for the NCAA must be affirmed. *Id*.

Although Ms. Bradley was not a spectator like the *Lanni* plaintiff, this Court should reach the same result, because the NCAA owed Ms. Bradley no legal duty of care. *Lanni* compared the relationship between "the NCAA and a student-athlete participating at an event on the campus of a member institution" to the relationship between "a national fraternity and a student engaged with a local chapter." *Id.* at 549. Referencing the Indiana Supreme Court decision in *Yost v. Wabash College*, 3 N.E.3d 509 (Ind. 2014), the *Lanni* court emphasized that:

> [A] national fraternity lacked any direct oversight and control of the individual fraternity members. It did not have any employees present in the fraternity house, and the day-to-day management of the house was the responsibility of the local fraternity, not the national fraternity. Despite the national fraternity's efforts to

> establish aspirational objectives and to promote their fulfillment, the relationship between the national fraternity and the individual student members was remote and tenuous.

Id. (citing *Yost*, 3 N.E.3d at 521).

Ms. Bradley's relationship with the NCAA is equally, if not more, tenuous and remote. While the NCAA does promote the safety and welfare of participating student-athletes, it assumes no role in providing medical advice or direction to student-athletes. Like the national fraternity in *Yost*, the NCAA did not have any employees present at AU, and the day-to-day management of AU's sports programs, is the university's prerogative. The undisputed record in this case does not show one fact connecting Plaintiff's injury to the NCAA. Plaintiff has only her bare conclusions that the NCAA somehow owed "a [legal] duty to protect the physical and mental well-being of all student-athletes participating in intercollegiate sports, including [Plaintiff]" and "a [legal] duty to protect student-athletes from brain injuries." Pl's Am. Complaint, ¶¶ 138-139, ECF No. 1-4. But the law provides no such duty. *See, e.g., Craig v. Amateur Softball Ass'n. of Am.*, 951 A.2d 372 (Pa. Super. Ct. 2008) (softball association had no legal duty to protect players for injuries suffered during game organized under the association's rules).

Ms. Earls, Plaintiff's field hockey trainer, referred Plaintiff to Dr. Aaron Williams, who found that Plaintiff did not have a concussion. *See supra* p. 6. Dr. Williams was not employed by or affiliated with the NCAA. Plaintiff discussed her symptoms with her head coach and AU's training staff. *See supra* p. 5. At no point did Plaintiff or her training staff communicate with the NCAA about her symptoms, injuries, or otherwise. *See supra* p. 7. Plaintiff admitted that she never called anyone at the NCAA and did not talk to anyone known to be affiliated with the NCAA about her alleged injury or any of her symptoms. *See supra* p. 7. Plaintiff made no attempt to visit the NCAA's website in order to contact the NCAA or find NCAA contact information. *See supra* p. 7. Plaintiff conceded that she does not know what the NCAA could have done differently. *See*

supra p. 8. Despite Plaintiff's allegations, she testified that she did not assume the NCAA owed her a legal duty of care when things went wrong. Rather, she trusted her trainers to take care of her—and rightly so. *See supra* p. 7-8.

When the Alabama Circuit Court in *Wells v. Nat'l Collegiate Athletic Ass'n* considered whether a legal duty existed based on facts almost identical to the facts in this case, the court found that the "undisputed facts do not support the existence of a legal duty owed by the NCAA to plaintiff." No. CV-2013-902657, 2017 WL 958272, at *10 (Ala. Cir. Ct. Mar. 7, 2017).[6] The *Wells* court found that because the NCAA is an unincorporated association of member-institutions, its relationships are "with the member schools [and, therefore the plaintiff's] relationship was with her college, not" the NCAA. *Id.* Moreover, the *Wells* plaintiff (1) "had no direct dealings with the NCAA"; (2) "was not counting on advice from the NCAA relating to her participation in collegiate athletics"; (3) "had no discussions with NCAA personnel about her situation"; and (4) "never visited the NCAA's website to determine if there was any information about concussions in sports." *Id.* According to the *Wells* plaintiff, "it was not the NCAA she was looking to for advice, but the . . . people with whom she did have a relationship, including her own physician . . . as well as the team doctors, coaches, and trainers at her school who knew of her previous concussions." *Id.*

[6] *Wells* involved a Samford University student-athlete who filed a fraudulent suppression claim against the NCAA. 2017 WL 958272, at *1. The *Wells* plaintiff had sustained two concussions while playing soccer in high school, and then a third concussion while playing soccer for Samford University. *Id.* Plaintiff claimed that "had she been told certain information by the NCAA concerning her risk of future concussions if she continued playing collegiate soccer, especially after having sustained two prior concussions while playing soccer in high school, then she would not have played collegiate soccer and, therefore, would not have sustained the [Samford] concussion." *Id.*

The court's analysis in *Wells* is instructive with respect to whether a duty exists between the NCAA and Ms. Bradley, because the elements of a fraudulent suppression claim closely mirror those of negligence: (1) the duty to disclose a materially existing fact; (2) suppression of that fact; (3) whether the suppression induced the plaintiff to act or refrain from acting (which the *Wells* court referred to as the proximate cause element); and (4) damages. *See id.* at *9-10, *13-14.

Just as in *Wells*, the undisputed facts of Ms. Bradley's case do not support the existence of a legal duty owed by the NCAA to Plaintiff. Just as in *Wells*, this Court should dismiss Plaintiff's claims.

i. The Law of Associations Bars Plaintiffs' Claims Against the NCAA

The United States Supreme Court has long recognized that a national organization does not subject itself, generally, to liability for the alleged negligence or other tortious activity of its members, where the organization promulgates rules governing some, but not all, of the conduct of its members. In *United Mine Workers of America, Inc. v. Coronado Coal Co.*, 259 U.S. 344 (1922) ("*Coronado Coal*"), the United Mine Workers' ("UMW") national union was sued for violation of federal antitrust laws arising out of alleged wrongful activity by certain of its members. The plaintiffs alleged that their businesses were destroyed because UMW local unions shut down non-union mines by instituting strikes against them. The plaintiffs asserted that the UMW was responsible for their losses, because the UMW had authority to discipline the local organizations, to call for local strikes on its own, and to pay for the cost of strikes. *See id.* at 395. Therefore, plaintiffs alleged, "the duty was thrust on [UMW], when it knew a local strike was on, to superintend it and prevent it becoming lawless." *Id*. The Supreme Court rejected the plaintiffs' claim, reasoning that unless the UMW expressly assumed responsibility for the activity in issue, the local union was responsible for its actions. *See id.* at 395-96. The Supreme Court noted that the UMW was governed by its own constitution, had a membership exceeding 400,000, and was subdivided into 30 districts and numerous local unions across the country.

The Supreme Court's analysis in *Coronado Coal* applies here. As with the UMW, the NCAA's member institutions determined what responsibilities they would cede to the NCAA and what areas they would retain for themselves. *See supra* p. 2-3. The NCAA's members delegated

control and authority over certain areas to the NCAA.[7] But, the member institutions determined to retain their autonomy, control and responsibility for most activities. *See supra* p. 2-3. Concussion related issues were among those for which the members retained responsibility. *See id.* at 4 ("An active member institution shall have a concussion management plan for its student-athletes."). Thus, Plaintiff's claim that the NCAA not only undertook and assumed "a [legal] duty to protect the physical and mental well-being of all student-athletes participating in intercollegiate sports, including [Plaintiff]," but also "a [legal] duty to protect student-athletes from brain injuries," runs well beyond the scope of authority delegated to the NCAA by its own members. Pl's Am. Complaint, at ¶¶ 138-39, ECF No. 1-5. Because the NCAA did not owe Plaintiff a legal duty of care, it was incapable of breaching any such duty.

Additionally, courts from around the country have further found that *athletic* associations have no duty to individual athletes, and that such a duty belongs instead to the individuals' schools and/or medical experts. *See e.g. Serrell v. Connetquot Central High School District of Islip*, 721 N.Y.S.2d 107 (N.Y. App. Div. 2001) (finding no legal duty for athletic organization whose primary purpose was to arrange school sporting events and not to manage individual student concussion-related issues); *Edwards v. Doug Ruedlinger, Inc*., 669 So. 2d 541, 544-45 (La. Ct. App. 1996) (finding no legal duty for athletic association, and specifically that "[a]ny duty to warn of such risks is better left to those who instruct and guide the players, not the [athletic association]"). In each of these cases, the courts declined to hold the governing bodies of sports associations liable for negligence given the lack of direct involvement in decisions made with respect to an injured athlete.

[7] For example, the NCAA member institutions have determined that the NCAA will make and enforce the eligibility rules concerning student-athletes' eligibility to participate in intercollegiate sports and the financial aid rules concerning the amount of aid student-athletes may receive. Stute Decl., ¶ 4, Ex. C, NCAA Manual, Art. 12, 15.

For the reasons articulated above, this Court should dismiss Ms. Bradley's negligence claim as a matter of law, *with prejudice*, and find summary judgment in favor of the NCAA.

b. The NCAA did not Proximately Cause Plaintiff's Injury

"The District of Columbia Court of Appeals 'has defined proximate causation as that cause which, in natural and continual sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.'" *Bradley*, 249 F. Supp. 3d at 167 (quoting *Smith v. Hope Village, Inc.*, 481 F. Supp. 2d 172, 199–200 (D.D.C. 2007)) (Walton, J)). "An actor whose conduct is a substantial factor in bringing about the harm shall be liable in negligence for harm foreseeably attributable to his or her conduct." *Id.*, 249 F. Supp. 3d at 167 (quoting *Smith*, 481 F. Supp. 2d at 200) (internal citations and quotations omitted).

In considering whether the NCAA's actions or inactions proximately caused Plaintiff's injuries, a dispositive issue for the Court is whether Ms. Bradley would have suffered the same harm even if the NCAA had exercised due care, as suggested by Plaintiff. *See D.C. v. Price*, 759 A.2d 181, 184 (D.C. 2000). While in most cases the existence of proximate cause is a question of fact for the jury, it becomes a question of law if it is "absolutely clear" that the defendant's negligence could not have been a proximate cause of the harm asserted by the plaintiff. *See Bradley*, 249 F. Supp. 3d at 168.

Based on the undisputed facts in this case, it is "absolutely clear" that the NCAA was not a proximate cause of the harm asserted by Plaintiff. The NCAA owed no legal duty of care to Plaintiff, and there are no "special facts" in this case that would create such a legal duty between Plaintiff and the NCAA. Even assuming *arguendo* that the NCAA owed Plaintiff a legal duty of care as she claims—*which it does not*—it is absolutely clear that the NCAA's actions would not have changed the independent medical assessments made by the various medical professionals who examined Plaintiff prior to her concussion diagnosis in 2012 for the following reasons: none

of the medical professionals that examined Plaintiff were NCAA employees or affiliated with the NCAA, thus performing their assessments without any NCAA input or oversight; at no point did Plaintiff or her physicians communicate with the NCAA about Plaintiff's symptoms, injuries, or otherwise; and at no point did Plaintiff make any attempt to visit the NCAA's website in order to contact the NCAA. None of the NCAA's actions or inactions impacted Dr. Williams's independent assessment of Plaintiff, which led to his conclusion that Plaintiff did not suffer a concussion.

The Concussion Management Plan requirements that were adopted in 2010 provided that member institutions must "have a concussion management plan for its student-athletes;" but the responsibility for implementing the plan remained with AU and the other Division I member institutions. *Supra* p. 4. Plaintiff admits that she signed AU's Concussion Statement, which expresses the "importance of immediately reporting symptoms of a head injury/concussion to the Sports Medicine Staff." *Supra* pp. 4-5. Plaintiff did not immediately report her symptoms to AU, and never contacted the NCAA. *See supra* pp. 5, 7.

Moreover, the NCAA is simply not in a position to prevent the harm of which Plaintiff complains. The NCAA and its approximately 500 employees in Indianapolis, cannot feasibly or responsibly undertake the role of preventing, identifying, treating, and monitoring concussions and other health and safety issues for more than 460,000 student-athletes before, during, and after each of the millions of practices and competitive events in which they participate, here and abroad, each year. Student-athletes rely, as they must, on the coaches, trainers, and doctors for guidance around individual health-related issues. The NCAA's member institutions have long recognized the NCAA's limitations in this regard. Consequently, those members have specifically provided in the legislation they adopted, which was published in the NCAA Manual, that each member

institution shall individually create, and be responsible for, a concussion management plan tailored for its institution. *See* Stute Decl., ¶ 4, Ex. C, NCAA Manual, Art. 3.

In accordance with Article 3, AU instituted a Concussion Management Plan, which included a process that "ensures student-athletes are educated about the signs and symptoms of concussions" and "ensures a student-athlete who exhibits signs, symptoms or behaviors consistent with a concussion shall be removed from athletic activities." *Id.*; *cf. supra* pp. 4-5. Plaintiff admits that she (1) "signed concussion papers" during an AU pre-season compliance meeting; (2) signed AU's Concussion Statement, which emphasized the immediate reporting of head injuries and concussions; and (3) was informed that "if you're experiencing certain [concussion] symptoms to tell your trainer." *Supra* pp. 4-5.

Dr. Cantu, Plaintiff's expert, testified that the NCAA's 2010 Handbook[8] was "very appropriate," because it required that "anybody suspected of a concussion or diagnosed with a concussion needed to be immediately removed from a contest." *Supra* p. 7. According to Dr. Cantu, "the most criticism for this case" belonged *not* to the NCAA but to Dr. Williams, who treated Ms. Bradley after her alleged injury. *Supra* p. 7. Plaintiff conceded that her head coach would have followed doctor's orders on her readiness to play and, if she was not cleared to play, she would not have played. *See supra* p. 8. Plaintiff also concedes that she does not know what

[8] Dr. Cantu testified that the NCAA "handbook that was done in 2010, following the National Football League, proclaiming that anybody suspected of a concussion or diagnosed with a concussion needed to be immediately removed from a contest was ***very appropriate***." SUMF ¶ 44. (emphasis added). In 2010, the NCAA issued its *2010-11 NCAA Sports Medicine Handbook*. (*See* Declaration of William F. Stute, ¶ 8, Ex. G.)

In it, the NCAA discusses the concussion management plan outlined in the NCAA Division I Manual: "Institutions shall have a concussion management plan on file such that a student-athlete who exhibits signs, symptoms or behaviors consistent with a concussion shall be removed from practice or competition and evaluated by an athletics healthcare provider with experience in the evaluation and management of concussions." *Id.* "Student-athletes diagnosed with a concussion shall not return to activity for the remainder of that day." *Id.* "Medical clearance shall be determined by the team physician or his or her designee according to the concussion management plan." *Id.* For purposes of this memorandum, the "NCAA's 2010 Handbook" shall refer to the *2010-11 NCAA Sports Medicine Handbook.*

the NCAA could have done differently and rightly so. *See supra* p. 8.

The NCAA's actions or inactions did not impact or influence Dr. Williams's independent medical assessment of Plaintiff's symptoms. And, the NCAA's actions or inactions did not impact or influence the independent assessments of the various other medical professionals Plaintiff visited prior to her diagnosis. It therefore follows that the NCAA should *not* be held responsible for Plaintiff's purported economic and noneconomic damages.

Plaintiff's claims against the NCAA are simply untenable. This Court should dismiss Plaintiff's claims against the NCAA, *with prejudice.*

II. Public Policy Warrants Judgment in the NCAA's Favor

In addition to analyzing the relationship between the parties, courts also look to fairness and public policy to determine whether a legal duty should be imposed on a defendant. *See Jefferson v. Collins*, 905 F. Supp. 2d 269, 291 (D.D.C. 2012) (citation omitted); *see also Hedgepeth*, 22 A.3d at 817 ("recognizing a duty is ultimately a determination grounded upon policy considerations") (citation omitted); *Orr v. Brigham Young Univ.*, 960 F. Supp. 1522, 1527-528 (D. Utah 1994) (citation omitted) (finding that whether an "actor has a duty to prevent another's harm requires careful consideration of the consequences of imposing that duty for the parties and for society"); *Bradley*, 249 F. Supp. 3d at 176-77 (finding that "public policy considerations provide support for shielding athletic conferences [and governing organizations] from litigation involving an injury to an athlete based on an athlete's participation in a sporting event sanctioned by the athletic conference.").

The responsibility for developing, managing, and implementing concussion management rests with the NCAA's member colleges and universities, *not* with the NCAA. The NCAA is far removed from the multitude of daily practices, scrimmages, work-outs, games, tournaments, and championships that take place in hundreds of cities across the United States and abroad. Plaintiff's

theory would require the NCAA to "police" each and every one of the millions of practices, games, tournaments, and other activities undertaken by student-athletes as part of collegiate athletics. This is simply not the way the NCAA operates today. It is not structured or resourced to do so, it is not what the law mandates, and it is not what the NCAA's rules require, as the same have been approved by the NCAA's members. As noted above, the members have agreed, year after year, that "[i]t is the responsibility of each member institution to protect the health of, and provide a safe environment for, each of its participating student-athletes." *See supra* p. 3; Stute Decl., ¶ 4, Ex. C, NCAA Manual, Art. 2.

Orr v. Brigham Young Univ. found that an example of a public policy consideration is whether "the defendant in question would be unable to perform the duty without either radically changing its character or drastically circumscribing the function it was charged with performing." 960 F. Supp. at 1527-28. This Court is under no obligation to "recognize a duty that is realistically incapable of performance or fundamentally at odds with the nature of the parties' relationship." *Id.*; *see also Bradley*, 249 F. Supp. 3d at 177 (finding that from a public policy perspective, "permitting liability against a governing organization based upon an athlete's mere participation in a sport … would make it difficult for [a governing organization] to function…").

Plaintiff's argument, taken to its logical conclusion, would lead to a flood of litigation and make the NCAA the guarantor of student safety across all student-athletes, during all activities, at all locations; a theory that is counter to the law, counter to the legislation enacted by the NCAA's member institutions, counter to common sense, and would have the effect of ending collegiate athletics as it has stood for over a century.

Accordingly, this Court should grant summary judgment in favor of the NCAA, and dismiss Plaintiff's negligence claim against the NCAA, *with prejudice*.

CONCLUSION

This Court already dismissed all of Plaintiff's unsupportable claims against the NCAA earlier in this case based on the NCAA's motion to dismiss, leaving just one single claim against the NCAA—negligence. After the benefit of full discovery, and based on the undisputed material facts developed therein, Plaintiff's claim of negligence against the NCAA is similarly untenable.

Based on the foregoing, this Court should grant summary judgment in favor of the NCAA, and dismiss Plaintiff's negligence claim against the NCAA, *with prejudice.*

Dated: January 16, 2019

Respectfully submitted,

/s/ William F. Stute

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JENNIFER BRADLEY,

Plaintiff,

v.

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, et al.,

Defendants.

Civil Action No. 1:16-CV-00346 (RBW)

Judge: Reggie B. Walton

STATEMENT OF UNDISPUTED MATERIAL FACTS

1. The NCAA is an unincorporated, voluntary association comprised of more than 1,100 member institutions. *See* What is the NCAA, http://www.ncaa.org/about (last visited January 14, 2019).

2. It employs approximately 500 individuals, nearly all of whom work at its headquarters in Indianapolis, Indiana. *See* What is the NCAA, What Does the National Office Do?, http://www.ncaa.org/about (last visited January 14, 2019).

3. Each year, more than 460,000 students across the country participate in 24 different sports, involving tens of thousands of intercollegiate athletic competitions and millions of practice events. *See* Student-Athletes, http://www.ncaa.org/student-athletes (last visited January 14, 2019).

4. The NCAA is member-led, and like all associations, its members determine the rules of the Association and the scope of the Association's duties and authority. *See* What is the NCAA, Who Makes the Rules, http://www.ncaa.org/about (last visited January 14, 2019).

5. Similar to other association structures, the NCAA does not control its members, or wield authority and responsibility over its members' activities, except with respect to those areas

where the members have specifically delegated those roles to the NCAA. *See* Stute Decl., ¶ 4, Ex. C, 2011-12 NCAA Division I Manual ("NCAA Manual"), Art. 2.

6. The NCAA's governing documents, including the 2011-2012 NCAA Division I Manual ("NCAA Manual"), demonstrate that the oversight and control of student-athlete well-being is not an area that has been delegated to the NCAA. *See* Stute Decl., ¶ 4, Ex. C, NCAA Manual, Art. 2.

7. Rather they provide that member institutions, and not the NCAA, retain nearly all of the control and oversight of intercollegiate sports-related activities, and make it clear that each member institution, and not the NCAA, is responsible for, and in control of, its intercollegiate athletics program including the health and safety of its participating student-athletes. *See* Stute Decl., ¶ 4, Ex. C, NCAA Manual, Art. 2.

8. On August 12, 2010, the NCAA Division I Board of Directors, comprised entirely of conference and university representatives, adopted legislative updates that were included in the NCAA Division I Manual to require that all active member institutions "have a concussion management plan for its student-athletes." Stute Decl., ¶ 4, Ex. C, NCAA Manual, Art. 3.

9. The member institution's plan was required to include, but not be limited to, the following:

> (a) An annual process that ensures student-athletes are educated about the signs and symptoms of concussions. Student-athletes must acknowledge that they have received information about the signs and symptoms of concussions and that they have a responsibility to report concussion-related injuries and illnesses to a medical staff member;
>
> (b) A process that ensures a student-athlete who exhibits signs, symptoms or behaviors consistent with a concussion shall be removed from athletics activities (e.g., competition, practice, conditioning sessions) and evaluated by a medical staff member (e.g., sports medicine staff, team physician) with experience in the evaluation and management of concussions;
>
> (c) A policy that precludes a student-athlete diagnosed with a concussion from

> returning to athletics activity (e.g., competition, practice, conditioning sessions) for at least the remainder of that calendar day; and
>
> (d) A policy that requires medical clearance for a student-athlete diagnosed with a concussion to return to athletics activity (e.g., competition, practice, conditioning sessions) as determined by a physician (e.g., team physician) or the physician's designee.

Stute Decl., ¶ 4, Ex. C, NCAA Manual, Art. 3.

10. Plaintiff admits that she "signed concussion papers" during an AU pre-season compliance meeting, and that she was informed that "if you're experiencing certain [concussion] symptoms to tell your trainer." Stute Decl., ¶ 2, Ex. A, Deposition of Jennifer Bradley dated November 21, 2017 ("Bradley Dep."), 33:5-34:10; 38:15-40:9; 250:1-252:15; *see also* Stute Decl., ¶¶ 5 and 7, Exs. D and F.

11. Plaintiff admits that she signed an AU Concussion Statement, which reads:

> I understand that participation in intercollegiate athletics includes the risk of injury, including but not limited to serious permanent injury and death. I further understand that there is a possibility that participation in my sport may result in a head injury or concussion. I have been provided with education on head injuries and understand the importance of immediately reporting symptoms of a head injury/concussion to the Sports Medicine Staff.

Stute Decl., ¶ 2, Ex. A, Bradley Dep. 33:5-34:10; 38:15-40:9; 250:1-252:15; Stute Decl., ¶¶ 5 and 7, Exs. D and F.

12. On September 23, 2011, Plaintiff allegedly suffered a concussion resulting from a collision during her play in a field hockey game against the University of Richmond, as a member of AU's Division I field hockey team. *See* Pl's Am. Complaint ¶ 98, ECF No. 1-5; *see also* Stute Decl., ¶ 2, Ex. A, Bradley Dep. 41:13-16.

13. Plaintiff recalls "feeling out of it" immediately after the collision but does not recall how she felt at halftime or in the second half of the game when she continued to play. Stute Decl., ¶ 2, Ex. A, Bradley Dep. 44:12-45:19, 46:9-12.

14. Plaintiff did not report her symptoms to any AU athletic trainers or staff until on or around October 1 or 2, 2011 - about a week after her alleged head injury. *See* Stute Decl., ¶ 2, Ex. A, Bradley Dep. 51:11-54:23.

15. After the September 23, 2011 University of Richmond game, Ms. Bradley did not have any conversations with any of her AU teammates, the coaching staff, or trainers regarding how she was feeling. *See* Stute Decl., ¶ 2, Ex. A, Bradley Dep. 46:4-47:5.

16. On September 25, 2011, Plaintiff played another game against Boston College. *See* Stute Decl., ¶ 2, Ex. A, Bradley Dep. 48:23-49:3.

17. Plaintiff did not have any conversations with the AU trainers or coaching staff before the Boston College game. *See* Stute Decl., ¶ 2, Ex. A, Bradley Dep. 50:10-14.

18. On October 1, 2011, Ms. Bradley and her team played Lehigh University. *See* Stute Decl., ¶ 2, Ex. A, Bradley Dep. 51:14.

19. According to Plaintiff, it was after the October 1 Lehigh University game that she finally had a discussion with Sarah Thorn and Jenna Earls, from AU's training staff. *See* Stute Decl., ¶ 2, Ex. A, Bradley Dep. 50:10-51:1; 51:14-17.

20. By October 1, 2011, Plaintiff had been purportedly experiencing symptoms of her alleged concussion for about a week. *See* Stute Decl., ¶ 2, Ex. A, Bradley Dep. 55:2-22.

21. Plaintiff also discussed her symptoms with Steve Jennings, the AU field hockey head coach. *See* Stute Decl., ¶ 6, Ex. E, Bates No. 23000.

22. Prior to October 1 or October 2, Plaintiff attended all of her field hockey practices since the Richmond game. *See* Stute Decl., ¶ 2, Ex. A, Bradley Dep. 58:15-18.

23. According to Plaintiff, she "played and started" the October 2, 2011 AU game against Temple University. Stute Decl., ¶ 6, Ex. E, Bates No. 23000.

24. On October 3, 2011, Plaintiff sent an email to Ms. Earls, her field hockey trainer, concerning the symptoms she was experiencing. *See* Stute Decl., ¶ 6, Ex. E, Bates No. 23000.

25. Ms. Earls scheduled an appointment for Plaintiff to see Dr. Aaron Williams on October 5, 2011. *See* Stute Decl., ¶ 2, Ex. A, Bradley Dep. 61:16-64:15.

26. Dr. Williams informed Plaintiff that she did ***not*** have a concussion. *See* Stute Decl., ¶ 2, Ex. A, Bradley Dep. 73:1-17.

27. According to Plaintiff, upon examination, Dr. Williams did ***not*** say she could no longer play field hockey, but Dr. Williams may have asked her to sit out for the next two practices. *See* Stute Decl., ¶ 2, Ex. A, Bradley Dep. 64:7-65:11.

28. On October 8, 2011, Plaintiff participated in the AU game against College of the Holy Cross, playing 15 minutes of each half. *See* Stute Decl., ¶ 2, Ex. A, Bradley Dep. 65:20-66-15; *see also* Stute Decl., ¶ 6, Ex. E, Bates No. 23000.

29. Plaintiff sat out for her next two games against Colgate University and the University of Maryland, on October 15 and 16, 2011, respectively. *See* Stute Decl., ¶ 6, Ex. E, Bates No. 23000.

30. On October 16, 2011, Dr. Williams suggested that Plaintiff receive a second opinion. *See* Stute Decl., ¶ 2, Ex. A, Bradley Dep. 64:7-66:19; 80:18-21.

31. On October 20, 2011, Plaintiff visited Dr. Michael Morris, an ENT specialist, who informed Plaintiff that she may have a brain virus. *See* Stute Decl., ¶ 2, Ex. A, Bradley Dep. 77:11-80:2; 84:7-18; 96:5-11.

32. Neither Dr. Williams nor Dr. Morris were employed by or affiliated with the NCAA. *See* Pl's Am. Complaint, ¶¶ 11-13, ECF No. 1-5; *see* Stute Decl., ¶ 2, Ex. A, Bradley Dep.

77:11-78:6; *see also* Dr. Michael S. Morris, MD, https://www.zocdoc.com/doctor/michael-s-morris-md-44131 (last visited January 16, 2019).

33. Over the following months, Plaintiff continued to participate in field hockey practices and games, sitting out intermittently. *See* Stute Decl., ¶ 2, Ex. A, Bradley Dep. 80:18-89:11; *see also* Stute Decl., ¶ 6, Ex. E, Bates No. 23000-23003.

34. From November 2011 through February 2012, Plaintiff met with several medical professionals until she was diagnosed with a concussion sometime during Spring of 2012. *See* Stute Decl., ¶ 2, Ex. A, Bradley Dep. 80:18-89:11; *see also* Stute Decl., ¶ 6, Ex. E, Bates No. 23000-23003.

35. Plaintiff visited her family physician, Dr. Kumar, during the 2011 Thanksgiving break. *See* Stute Decl., ¶ 6, Ex. E, Bates No. 23000; *see also* Stute Decl., ¶ 2, Ex. A, Bradley Dep. 77:25-78:10; 89:12-90:8.

36. Plaintiff had a follow up visit with Dr. Kumar on January 4, 2012. *See* Stute Decl., ¶ 6, Ex. E, Bates No. 23001; *see also* Stute Decl., ¶ 2, Ex. A, Bradley Dep. 89:12-91:2.

37. Plaintiff visited a neurologist, Dr. Puneet Singh, was on January 9, 2012. *See* Stute Decl., ¶ 6, Ex. E, Bates No. 23001.

38. From February 24, 2012 – March 27, 2012, Plaintiff visited Barbara Blitzer, a psychotherapist. *See* Stute Decl., ¶ 6, Ex. E, Bates No. 23001.

39. None of these medical professionals were employed by or affiliated with the NCAA. *See* Pl's Am. Complaint, ¶¶ 116-17, ECF No. 1-5; *see* Stute Decl., ¶ 6, Ex. E, Bates No. 23000-23001; *see* Barbara Blitzer, Mindful Psychotherapy Services, https://www.barbarablitzer.com/ (last visited January 16, 2019).

40. Plaintiff was diagnosed with a concussion in the Spring of 2012. *See* Stute Decl., ¶ 2, Ex. A, Bradley Dep. 101:6-15.

41. Although Plaintiff does not recall exactly when she was diagnosed with a concussion, she is certain that she was diagnosed by neurologist, Dr. Puneet Singh. *See* Stute Decl., ¶ 2, Ex. A, Bradley Dep. 100:3-101:15.

42. At no point did Plaintiff or Dr. Singh communicate with the NCAA about Plaintiff's symptoms, injuries, or otherwise; and Plaintiff made no attempt to visit the NCAA's website in order to contact the NCAA or find the NCAA's contact information. *See* Stute Decl., ¶ 2, Ex. A, Bradley Dep. 271:22-272:8, 288:7-22.

43. Plaintiff's negligence claim against the NCAA arises from her alleged reliance "on Defendant NCAA's superior knowledge and expertise," and the NCAA's alleged failure to provide appropriate guidance to its member institutions, such as Defendant AU, on concussion management to protect student-athletes. Pl's Am. Complaint, ¶¶ 137-146, ECF No. 1-5.

44. On June 6, 2018, Plaintiff's expert, Dr. Robert Cantu, testified that the NCAA's 2010 Handbook was "very appropriate," because it required that "anybody suspected of a concussion or diagnosed with a concussion needed to be immediately removed from a contest [*i.e.*, practices or games]." Stute Decl., ¶ 3, Ex. B, Deposition of Robert Cantu, M.D. dated June 6, 2018 ("Cantu Dep.") 128:15-25.

45. According to Plaintiff's expert "the most criticism for this case" belonged *not* to the NCAA, but to Dr. Williams, who treated Ms. Bradley after her alleged injury, and found that she did not have a concussion. Stute Decl., ¶ 3, Ex. B, Cantu Dep. 48:9-18.

46. During Plaintiff's November 21, 2017 deposition, Ms. Bradley admitted that she never called anyone at the NCAA and did not talk to anyone known to be affiliated with the NCAA

about her alleged injury or any of her symptoms. *See* Stute Decl., ¶ 2, Ex. A, Bradley Dep. 271:22-272:8.

47. According to Plaintiff, she trusted her trainers to take care of her. *See* Stute Decl., ¶ 2, Ex. A, Bradley Dep. 271:22-272:8.

48. Despite Plaintiff's allegations, she testified that she did not assume the NCAA owed her a legal duty of care when things went wrong, but that this duty, instead, was that of her "trainer, [ ] coaches, and if it got any worse, the doctors." Stute Decl., ¶ 2, Ex. A, Bradley Dep. 280: 22-25.

49. Ms. Bradley acknowledged that, "[f]ield hockey is a . . . physical sport." Stute Decl., ¶ 2, Ex. A, Bradley Dep. 87:17-23.

50. She played field hockey voluntarily for AU, and with full knowledge of the risks associated with playing the sport. *See* Stute Decl., ¶ 7, Ex. F.

51. On July 1, 2009, Plaintiff signed an "Acknowledgement of Risk" agreement with AU, where she acknowledged that she is "aware of the ricks of injury inherent in athletic activities," and the risks in playing field hockey, in particular, and "that such risks may include death, paralysis and other serious permanent bodily injury." Stute Decl., ¶ 7, Ex. F.

52. Plaintiff acknowledged that "participation in intercollegiate athletics includes the risk of injury, including, but not limited to serious permanent injury and death" and that "such injuries may occur in the absence of negligence." Stute Decl., ¶ 7, Ex. F.

53. Plaintiff concedes that she does not know what the NCAA could have done differently. *See* Stute Decl., ¶ 2, Ex. A, Bradley Dep. 274:17-275:2.

54. Plaintiff admits that her head coach would have followed the doctor's orders on her readiness to play. *See* Stute Decl., ¶ 2, Ex. A, Bradley Dep. 84:12-25.

55. According to Plaintiff, if her doctors informed her that she was not cleared to play, she would not have played. *See* Stute Decl., ¶ 2, Ex. A, Bradley Dep. 84:2-25.

Respectfully submitted,

/s/ William F. Stute

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